

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5630

PETITION OF M/I SCHOTTENSTEIN HOMES, INC.

(Hearing held September 12, 2001)

OPINION OF THE BOARD

(Effective date of Opinion, October 5, 2001)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(b)(2). The petitioner proposes to construct a new single-family dwelling that requires a twelve (12) foot as it is within eight (8) feet of the rear yard lot line. The required setback is twenty (20) feet.

Jody S. Kline, Esquire, represented the petitioner at the public hearing.

The subject property is Lot 3, Block 9, Alta Vista Subdivision, located at 5504 Spruce Tree Avenue, Bethesda, Maryland, in the R-60 Zone (Tax Account No. 07-03297231).

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes to construct a new single-family dwelling.
2. The subject property is a uniquely shaped "pipestem" or "flag" lot, which is smaller in size than the other surrounding lots. Lots that are rectangular in shape surround the property. See, Exhibit No. 11.
3. The access to the residence is via a private road that provides access to all of the homes located off of the private road. The front of the residence faces east toward the private road and away from Spruce Tree Avenue. The Department of Permitting Services (DPS) has designated Spruce Tree Avenue as the front of the lot and the south section of the lot as the rear. The southern section of the property is a side yard.
4. The property is encumbered with several utility and access easements, which further constrain the area of development within the lot, as shown on Exhibit No. 12. The northern side yard is elevated higher than the two adjoining lots, Lots 1 and 2, which lessens the visual impact for those properties.
5. The record reflects that the orientation of the proposed dwelling is consistent with the development plan that was filed for subdivision and which has

received substantial inquiry and review during the subdivision process. The maximum buildable depth of the property is 45 feet. In response to questions from the Board, Mr. Kline stated that “a structure of that size could only be accomplished with construction out of keeping with the character and value of surrounding existing and proposed residences and only by setting the northern edge of the house immediately on the property line confronting the rear yards of adjacent residences.”

FINDINGS OF THE BOARD

Based on the petitioner’s binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

1. The subject property is a uniquely shaped “pipestem” or “flag” lot. The property’s buildable area is smaller than the other lots in the subdivision, most of which are rectangular in shape. The Board finds that this condition is peculiar and unique to the property and that the strict application of the regulations would result in practical difficulties for the property owner.
2. The Board further finds that the DPS designation of the property’s side yard as a rear yard would result in practical difficulties to and an undue hardship upon the property owner if the variance were to be denied.

(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.

The Board finds that the variance requested for the construction of a new single-family dwelling is the minimum reasonably necessary to overcome the exceptional conditions of the property.

(c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.

The proposed construction is a residential use consistent with the intent, purpose and integrity of the general plan and the approved area Master Plan. The Board notes that the record reflects that the design and orientation of the residence on the property has received substantial review and inquiry during the subdivision process.

(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

The record contains no testimony or correspondence in opposition to the variance request. The Board finds that the elevated topography at the northern boundary will lessen the visual impact on Lots 1 and 2, and that the variance will not be detrimental to the use and enjoyment of the adjoining or neighboring properties.

Accordingly, the requested variance of twelve (12) feet from the required twenty (20) foot rear lot line setback is granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, the testimony of his witnesses and representations of his attorney, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 7(a) through 7(h).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Angelo M. Caputo, seconded by Donna L. Barron, with Louise L. Mayer, Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 5th day of October, 2001.

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve-month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.